IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 229 OF 2006

SHRI SURESH PRABHAKAR PRABHU, MUMBAI ....Appellant

Versus

SHRI CONSTANCIO MENEZES AND 7 ORS., ...Respondents

Mr. A. F. Diniz, with Mr. M.S. Prabhu Desai, Advocates for the Appellant.

Coram:- J. N. PATEL, J.

Date:- 15th November, 2006

P.C.:

The learned counsel for the appellant submits that the appeal can be disposed of at the stage of admission itself without insisting for preparation of Paper Book and therefore this Court on 9th October, 2006 directed notice before admission for final disposal, returnable after four weeks.

2. The short point which arises for consideration is whether the appellant who was the original defendant No.3 was duly served before the Trial Court.

3. The respondent/original plaintiff filed a suit against the original defendant No.1 i.e. M/s Western India Financial Services Ltd. which was at the relevant time known as Amnet India Credit Corporation Ltd. having its office at Andheri (West), Mumbai-400 058 and so also joined all its Directors.

4. It was the case of the plaintiff that on 24.9.1996 the plaintiff has

invested a sum of Rs.1,00,000/- in the defendant No.1/Company which was by way of Demand Draft. Thereafter he deposited an additional sum of Rs.1,30,000/- which was also by Demand Draft beyond the period of investment was for 90 days on which the rate of interest to be paid was 20% per annum. It is the case of the plaintiff that a sum of Rs.1,00,000/- was invested on 24.9.1996 which was matured for repayment on 23.12.1996, wehreas consequent deposit of Rs.1,30,000/- was invested on 4.10.1996 and had matured for payment on 3.1.1997. Under the Scheme there was an option on the part of the investor to renew this deposit. It appears that the plaintiff was not paid the deposited amount along with interest on its maturity and therefore a notice was issued to the respondent No.1/Company demanding the amount on which defendant No.1 Company called upon the plaintiff to submit the statement of account along with proof of documents. There was some controversy in the matter and therefore the plaintiff was left with no choice but to file the suit. It is the case of the plaintiff that as the defendants could not be served in the usual course, they were served by resorting to Order V, Rule 20 of C.P.C. by publication of notice in "Gomantak Times" on 6.3.1998 and as nobody appeared in response to the notice, the Court proceed ex-parte against the defendants.

5. The learned counsel appearing for the appellant/original defendant No.3 submitted that the service under Order V, R.20 of C.P.C. would not justify in the facts and circumstances of the case and even if it is to be accepted though all the defendants reside at Mumbai and the Company had its registered office at Mumbai, the publication ought to have been made in the newspapers which are published in Mumbai and therefore on this count alone the ex-parte judgment and decree deserves to be quashed and set aside.

6. Another contention of the learned counsel for the appellant is that the appellant had already resigned from the Directorship of defendant No.1/Company on 6.5.96, wehreas the investment was made for the first time on 24.9.96. This Court, therefore, finds that the trial Court ought not

to have proceeded ex-parte against the appellant unless it was satisfied that the appellant was duly served with summons and therefore the mode by which the appellant is served that is by resorting to Order V. R.20(1)(a) C.P.C. by ordering the notice only in "Gomantak Times" which is having a restricted circulation in Goa. It cannot be expected for the appellant to have knowledge of the fact that the suit was instituted against him as one of the Directors of the Company so as to make him answerable to the claim.

7. Insofar as the contention of the appellant that at the relevant time he was not Director of the Company, is a matter of evidence which has to be decided at the time of trial on merits.

8. Therefore this Court quash and sets aside the jdugment and decree passed in Special Civil Suit No.207/1997/II Addl on 28th April, 1999 on the condition that the appellant shall deposit the costs of the suit which was awarded under the impugned Judgment and Order, within a period of four weeks and shall also give notice of the same to the respondent/original plaintiff.

Appeal stands disposed of accordingly with no order as to costs.

J. N. PATEL, J.

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